

SECOND REGULAR SESSION

[PERFECTED]

HOUSE COMMITTEE SUBSTITUTE FOR

HOUSE BILL NO. 1885

99TH GENERAL ASSEMBLY

5094H.02P

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 208.909, 208.918, and 208.924, RSMo, and to enact in lieu thereof four new sections relating to home- and community- based care and personal care assistant services.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 208.909, 208.918, and 208.924, RSMo, are repealed and four new sections enacted in lieu thereof, to be known as section 208.896 208.909, 208.918, and 208.924, to read as follows:

208.896. 1. To ensure the availability of comprehensive and cost-effective choices for MO HealthNet participants to live at home in the communities of their choice and to receive support from caregivers of their choice, the department of social services shall apply to the United States Secretary of Health and Human Services for a structured family caregiver waiver. Federal approval of the waiver is necessary to implement the provisions of this section. Structured family caregiving shall be considered an agency-directed model and no financial management services shall be required.

2. The structured family caregiver waiver shall include:

(1) A choice for participants of qualified and credentialed caregivers, including family caregivers;

(2) A choice for participants of community settings in which they receive structured family caregiving. A caregiver may provide structured family caregiving services in the caregiver's home or the participant's home, but the caregiver must reside full time in the same home as the participant;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

15 (3) A requirement that caregivers under this section are added to the family care
16 safety registry and comply with the provisions of sections 210.900 to 210.936;

17 (4) A requirement that all caregivers and organizations serving as structured family
18 caregiving agencies are subject to the provisions of section 660.023;

19 (5) A cap of three hundred participants to receive structured family caregiving;

20 (6) A requirement that all organizations serving as structured family caregiving
21 agencies are considered in-home service provider agencies and are accountable for
22 documentation of services delivered, meeting the requirements set forth for these provider
23 agencies, qualification and requalification of caregivers and homes, caregiver training,
24 providing a case manager or registered nurse to create a service plan tailored to each
25 recipient's needs, professional staff support for eligible people, ongoing monitoring and
26 support through monthly home visits, deployment of electronic daily notes, and remote
27 consultation with families;

28 (7) Caregivers are accountable for providing for the care recipient's personal care
29 needs. This includes, but is not limited to, laundry, housekeeping, shopping, transportation,
30 and activities of daily living assistance;

31 (8) A daily payment rate for services that is adequate to pay stipends to caregivers
32 and pay provider agencies for the cost of providing professional staff support as required
33 under this section and administrative functions required of in-home services provider
34 agencies. The payment to the provider agency is not to exceed thirty-five percent of the
35 daily reimbursement rate; and

36 (9) Daily payment rates for structured family caregiving services shall be tier-based
37 on medical necessity criteria determined by the department. The maximum daily payment
38 rate for structured family caregiving services shall not exceed seventy-five percent of the
39 daily nursing home cost cap established by the state each year.

40 3. (1) Within ninety days of the effective date of this section, the department of
41 social services shall, if necessary to implement the provisions of this section, apply to the
42 United States Secretary of Health and Human Services for a structured family caregiver
43 waiver. The department of social services shall request an effective date of not later than
44 July 1, 2019, and shall, by such date, take all administrative actions necessary to ensure
45 timely and equitable availability of structured family caregiving services for home- and
46 community-based care participants.

47 (2) Upon receipt of an approved waiver under subdivision (1) of this subsection, the
48 department of health and senior services shall promulgate rules to implement the
49 provisions of this section. Any rule or portion of a rule, as that term is defined in section
50 536.010, that is created under the authority delegated in this section shall become effective

51 **only if it complies with and is subject to all of the provisions of chapter 536 and, if**
52 **applicable, section 536.028. This section and chapter 536 are nonseverable, and if any of**
53 **the powers vested with the general assembly pursuant to chapter 536 to review, to delay**
54 **the effective date, or to disapprove and annul a rule are subsequently held**
55 **unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted**
56 **after August 28, 2018, shall be invalid and void.**

208.909. 1. Consumers receiving personal care assistance services shall be responsible
2 for:
3 (1) Supervising their personal care attendant;
4 (2) Verifying wages to be paid to the personal care attendant;
5 (3) Preparing and submitting time sheets, signed by both the consumer and personal care
6 attendant, to the vendor on a biweekly basis;
7 (4) Promptly notifying the department within ten days of any changes in circumstances
8 affecting the personal care assistance services plan or in the consumer's place of residence;
9 (5) Reporting any problems resulting from the quality of services rendered by the
10 personal care attendant to the vendor. If the consumer is unable to resolve any problems
11 resulting from the quality of service rendered by the personal care attendant with the vendor, the
12 consumer shall report the situation to the department; ~~and~~
13 (6) Providing the vendor with all necessary information to complete required paperwork
14 for establishing the employer identification number; **and**
15 (7) **Allowing the vendor to comply with its quality assurance and supervision**
16 **process, which shall include, but not be limited to, bi-annual face-to-face home visits and**
17 **monthly case management activities.**

18 2. Participating vendors shall be responsible for:
19 (1) Collecting time sheets or reviewing reports of delivered services and certifying the
20 accuracy thereof;
21 (2) The Medicaid reimbursement process, including the filing of claims and reporting
22 data to the department as required by rule;
23 (3) Transmitting the individual payment directly to the personal care attendant on behalf
24 of the consumer;
25 (4) Monitoring the performance of the personal care assistance services plan. **Such**
26 **monitoring shall occur during the bi-annual face-to-face home visits under section 208.918.**
27 **The vendor shall document whether the attendant was present and if services are being**
28 **provided to the consumer as set forth in the plan of care.**

29 3. No state or federal financial assistance shall be authorized or expended to pay for
30 services provided to a consumer under sections 208.900 to 208.927, if the primary benefit of the

31 services is to the household unit, or is a household task that the members of the consumer's
32 household may reasonably be expected to share or do for one another when they live in the same
33 household, unless such service is above and beyond typical activities household members may
34 reasonably provide for another household member without a disability.

35 4. No state or federal financial assistance shall be authorized or expended to pay for
36 personal care assistance services provided by a personal care attendant who is listed on any of
37 the background check lists in the family care safety registry under sections 210.900 to ~~[210.937]~~
38 **210.936**, unless a good cause waiver is first obtained from the department in accordance with
39 section 192.2495.

40 5. (1) All vendors shall, by July 1, 2015, have, maintain, and use a telephone tracking
41 system for the purpose of reporting and verifying the delivery of consumer-directed services as
42 authorized by the department of health and senior services or its designee. ~~[Use of such a system~~
43 ~~prior to July 1, 2015, shall be voluntary.]~~ The telephone tracking system shall be used to process
44 payroll for employees and for submitting claims for reimbursement to the MO HealthNet
45 division. At a minimum, the telephone tracking system shall:

- 46 (a) Record the exact date services are delivered;
- 47 (b) Record the exact time the services begin and exact time the services end;
- 48 (c) Verify the telephone number from which the services are registered;
- 49 (d) Verify that the number from which the call is placed is a telephone number unique
50 to the client;
- 51 (e) Require a personal identification number unique to each personal care attendant;
- 52 (f) Be capable of producing reports of services delivered, tasks performed, client identity,
53 beginning and ending times of service and date of service in summary fashion that constitute
54 adequate documentation of service; and
- 55 (g) Be capable of producing reimbursement requests for consumer approval that assures
56 accuracy and compliance with program expectations for both the consumer and vendor.

57 (2) ~~[The department of health and senior services, in collaboration with other appropriate~~
58 ~~agencies, including centers for independent living, shall establish telephone tracking system pilot~~
59 ~~projects, implemented in two regions of the state, with one in an urban area and one in a rural~~
60 ~~area. Each pilot project shall meet the requirements of this section and section 208.918. The~~
61 ~~department of health and senior services shall, by December 31, 2013, submit a report to the~~
62 ~~governor and general assembly detailing the outcomes of these pilot projects. The report shall~~
63 ~~take into consideration the impact of a telephone tracking system on the quality of the services~~
64 ~~delivered to the consumer and the principles of self-directed care.~~

65 ———(3)] As new technology becomes available, the department may allow use of a more
66 advanced tracking system, provided that such system is at least as capable of meeting the
67 requirements of this subsection.

68 [(4)] (3) The department of health and senior services shall promulgate by rule the
69 minimum necessary criteria of the telephone tracking system. Any rule or portion of a rule, as
70 that term is defined in section 536.010, that is created under the authority delegated in this
71 section shall become effective only if it complies with and is subject to all of the provisions of
72 chapter 536 and, if applicable, section 536.028. This section and chapter 536 are nonseverable
73 and if any of the powers vested with the general assembly pursuant to chapter 536 to review, to
74 delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional,
75 then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2010,
76 shall be invalid and void.

77 [6. In the event that a consensus between centers for independent living and
78 representatives from the executive branch cannot be reached, the telephony report issued to the
79 general assembly and governor shall include a minority report which shall detail those elements
80 of substantial dissent from the main report.

81 ———7. No interested party, including a center for independent living, shall be required to
82 contract with any particular vendor or provider of telephony services nor bear the full cost of the
83 pilot program.]

208.918. 1. In order to qualify for an agreement with the department, the vendor shall
2 have a philosophy that promotes the consumer's ability to live independently in the most
3 integrated setting or the maximum community inclusion of persons with physical disabilities,
4 and shall demonstrate the ability to provide, directly or through contract, the following services:

5 (1) Orientation of consumers concerning the responsibilities of being an employer[;] and
6 supervision of personal care attendants including the preparation and verification of time sheets.

7 **Such orientation shall include notifying consumers that falsification of personal care**
8 **attendant time sheets shall be considered fraud and shall be reported to the department;**

9 (2) Training for consumers about the recruitment and training of personal care
10 attendants;

11 (3) Maintenance of a list of persons eligible to be a personal care attendant;

12 (4) Processing of inquiries and problems received from consumers and personal care
13 attendants;

14 (5) Ensuring the personal care attendants are registered with the family care safety
15 registry as provided in sections 210.900 to [210.937] **210.936**; and

16 (6) The capacity to provide fiscal conduit services through a telephone tracking system
17 by the date required under section 208.909.

18 2. In order to maintain its agreement with the department, a vendor shall comply with
19 the provisions of subsection 1 of this section and shall:

20 (1) Demonstrate sound fiscal management as evidenced on accurate quarterly financial
21 reports ~~[and annual audit]~~ submitted to the department; ~~[and]~~

22 (2) **Attest that all adequate documentation for all information is provided on**
23 **reports, and billing records have sufficient required documentation to support the amounts**
24 **claimed;**

25 (3) Demonstrate a positive impact on consumer outcomes regarding the provision of
26 personal care assistance services as evidenced on accurate quarterly and annual service reports
27 submitted to the department;

28 ~~[(3)]~~ (4) Implement a quality assurance and supervision process that ensures program
29 compliance and accuracy of records:

30 (a) **The department of health and senior services shall promulgate by rule a**
31 **consumer-directed services division provider certification manager course; and**

32 (b) **The vendor shall perform with the consumer at least bi-annual face-to-face**
33 **home visits to provide ongoing monitoring of the provision of services in the plan of care**
34 **and assess the quality of care being delivered. The bi-annual face-to-face home visits do**
35 **not preclude the vendor's responsibility from its ongoing diligence of case management**
36 **oversight; [and]**

37 ~~———(4)]~~ (5) Comply with all provisions of sections 208.900 to 208.927, and the regulations
38 promulgated thereunder; **and**

39 (6) **Maintain a proper business location, the criteria for which shall be defined by**
40 **the department of health and senior services by rule.**

41 3. **No state or federal funds shall be authorized or expended if the owner, primary**
42 **operator, certified manager, or any direct employee of the consumer-directed services**
43 **vendor is also the personal care attendant.**

 208.924. A consumer's personal care assistance services may be discontinued under
2 circumstances such as the following:

3 (1) The department learns of circumstances that require closure of a consumer's case,
4 including one or more of the following: death, admission into a long-term care facility, no longer
5 needing service, or inability of the consumer to consumer-direct personal care assistance service;

6 (2) The consumer has falsified records; **provided false information of his or her**
7 **condition, functional capacity, or level of care needs;** or committed fraud;

8 (3) The consumer is noncompliant with the plan of care. Noncompliance requires
9 persistent actions by the consumer which negate the services provided in the plan of care;

10 (4) The consumer or member of the consumer's household threatens or abuses the
11 personal care attendant or vendor to the point where their welfare is in jeopardy and corrective
12 action has failed;

13 (5) The maintenance needs of a consumer are unable to continue to be met because the
14 plan of care hours exceed availability; and

15 (6) The personal care attendant is not providing services as set forth in the personal care
16 assistance services plan and attempts to remedy the situation have been unsuccessful.

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